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09/910,203	07/20/2001	Boris E. Goldman	POM-0001	1470

7590 08/24/2004  
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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/910,203

Applicant(s)

GOLDMAN ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. The Amendment filed June 10,2004 has been entered. Claims 1-25 remain pending in the application.
2. In light of the Amendment of June 10,2004, the restriction requirement is withdrawn, and the objection to claim 17 has also been withdrawn.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claim 4,18-20,23,24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
5. Regarding claim 4, while the specification is enabling for a radiant barrier applied to an exterior *or* an interior portion, it does not reasonably provide enablement for a radiant barrier applied to both an exterior *and* an interior portion. For examination purposes, the specification will be considered enabling.
6. Regarding claim 18, recites "the bag eliminates an insulative layer facilitating at least one of disposal and folding thereof". However , according to applicant discloses a bag that is disposable, and as explained on page 12 (explaining Figure 8 and Figures 4-8), comprises insulative material (e.g. items

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130 and 144) and may be folded. Thus, as disclosed the insulative material has not been eliminated to facilitate disposal or folding. For examination purposes, this limitation will be viewed as that recited in claim 16, wherein the bag "eliminates a *bulky* insulative layer facilitating disposal and folding thereof."

7. Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

8. Regarding claims 1,9,18, the barrier used in the container of the disclosure is to provide a cool temperature in the container and limit the heat transfer from outside the container (e.g. the embodiment of Figure 10). However, the amended claims recite the barrier is used to "provide heat retention in the container thus limiting heat loss from said food item". Thus, this claim contradicts the purpose of the barrier for the beverage embodiment as disclosed in the specification. For examination purposes, it will be assumed that for beverages the barrier limits heat transfer *from* the exterior of the bag.

9. Regarding claims 2,3,5-8, and 25, claim 25 recites a container made of "firm material", but the specification the material used for the container should be "flexible, thin, and light" as well as "deformable". The term "firm material" appears to contradict the specification. For examination purposes and in light of the disclosure "firm material" will be understood to mean the container is capable of being used for delivery.

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10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 2,3,5-8, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 25 recites a container made of "firm material", but the specification the material used for the container should be "flexible, thin, and light". It is unclear what is meant by "firm" in light of "flexible" as disclosed or "deformable" as recited. For examination purposes and in light of the disclosure "firm material" will be understood to mean the container is capable of being used for delivery.

### ***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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13. Claims 1,3,7-11,16,17,21,22, and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Workman (US 4537313).

14. Note a cheese is considered the top of a pizza and the base is considered the crust, and wine bottles have a top and base. Also the bag is foldable and sufficient bulky insulation has been eliminated. Although claim 9 includes "a disposable container" in the preamble, it is noted that the structural limitations recited are taught by Workman, and thus Workman anticipates the claim. See Column 1, lines 5-40, Column 2, lines 6-25, Column 3, lines 34-38, Figure 1.

15. Claims 1,3,9,11, 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Russell (CA 2041376 A).

16. Note a cheese is considered the top of a pizza and the base is considered the crust. Also the bag is foldable. Thus, sufficient insulation has been eliminated. Although claim 9 includes "a disposable container" in the preamble, it is noted that the structural limitations recited are taught by Russell. See Background of the Invention on Pages 1 and 2, Pages 7 and 8, and Figures 1-4.

17. Claims 1,3,7-11,16, 17, 21,22,25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Mogil (US 6247328 B1).

18. Note canned beverages have tops and bases. Also Mogil eliminates some insulation such that the bag is collapsible and thus foldable. Although claim

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9 includes "a disposable container" in the preamble, it is noted that the structural limitations recited are taught by Mogil, and thus Mogil anticipates the claim. See Abstract, Column 1, lines 28-42, Column 3, lines 16-26, Figure 10, Column 9, line 48 to Column 10, line 26.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1-17,21,22,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (US 6450685B1) in view of Bonta (US 6200029 B1).

21. Regarding claims 1,2,7-11,16,17,21,22,25 Scott teaches a foldable, flexible, and durable bag with a metallized polyester reflective outer layer, that can be used to store pizza, and is an improvement over conventional large pizza delivery bags because it has eliminated bulky insulation. Also it can maintain temperatures, either cold or hot, of a stored food item for a given period of time (Column 1, line 29 to Column 2, line 22, Column 2, lines 45-61, Column 3, lines 14-36, Figures). However, although Scott teaches an aperture that is resealable, Scott is silent a flap as recited in claims 1 and 9. Additionally, Scott is silent in teaching an interior metallized portion or an interior and an exterior metallized portion together, as recited in claims 3 and 4.

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22. Bonta also teaches a reduced sized pizza bag with a reflective radiant and convection barrier that is flexible and foldable, yet can maintain the heat of the pizza for a period of time. Bonta teaches providing an envelope style closing (i.e. a flap) so that pizza can be readily slipped into the pocket (Column 1, lines 35-50, Column 3, lines 20-23,30-35). Bonta also teaches providing a reflective metallic layer on the interior portion (Column 2, line 63 to Column 3, line 13).

23. Therefore, it would have been obvious to modify the closure of Scott and include a flap over the aperture as recited in claims 1 and 9, since Scott teaches improving pizza delivery bags and Bonta teaches a flap-like closure will enable one to readily slip pizzas into the bag. It would have been further obvious to modify Scott and select a reflective metallic layer on the interior portion, as recited in claim 3, since Bonta teaches using a reflective radiant and convection barrier in an interior portion will provide a flexible bag, yet maintain the temperature of the pizza, same as Scott. Thus one would have been substituting one conventional barrier arrangement for another for the same purpose. It would have been further obvious select a combination of both exterior and interior portions with metallized layers, since the barrier effects would be cumulative (i.e. preventing heat transfer from both interior and exterior of the bag).

24. Regarding claim 5, Scott teaches the metallized layer is created by vapor depositing or adhesive and applied to the bottom surface, but is silent in teaching painting per se. However, once it was known to obtain a metallized layer, to select any conventional means for applying the metallized layer, would have depended on the particular equipment available and economic factors, since

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vapor depositing would require more of an investment in equipment than painting..

25. Regarding claims 6,12-15, although Scott teaches a metallized layer, and specifically teaches 0.0030 inches of metallized polyester, Scott is silent in teaching metallized polyethylene at 0.00125 inches thick or metallized oriented polypropylene at 0.0015 or 0.0030 inches thick. However, once it was known to select a metallized polymeric layer for the outer layer, to select any particular type of polymer or thickness would have been an obvious result effective variable of the desired outer layer properties since polymers differ by tear strength and flexibility and Scott teaches the bag must be flexible yet strong (Column 2, lines 17-19) , in addition to maintaining low thermal transmission.

26. Claims 18,20,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (US 6450685B1) in view of Bonta (US 6200029 B1) and Russell (CA 2041376 A).

27. Regarding claims 18,24,Scott teaches a foldable, flexible, and durable bag with a metallized polyester reflective outer layer, that can be used to store pizza, and is an improvement over conventional large pizza delivery bags because it has eliminated bulky insulation. Also it can maintain temperatures, either cold or hot, of a stored food item for a given period of time (Column 1, line 29 to Column 2, line 22, Column 2, lines 45-61, Column 3, lines 14-36, Figures). However, although Scott teaches an aperture that is resealable, Scott is silent a flap as

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recited in claim 18. Additionally, Scott is also silent in teaching the container is disposable and disposing of the container by folding or tearing.

28. Bonta also teaches a reduced sized pizza bag with a reflective radiant and convection barrier that is flexible and foldable, yet can maintain the heat of the pizza for a period of time. Bonta teaches providing an envelope style closing (i.e. a flap) so that pizza can be readily slipped into the pocket (Column 1, lines 35-50, Column 3, lines 20-23,30-35). Bonta also teaches providing a reflective metallic layer on the interior portion (Column 2, line 63 to Column 3, line 13).

29. Russell is relied on as evidence of the desire to improve over conventional expensive pizza delivery bags in favor of smaller bags that may be left with the consumer (Page1).

30. Therefore, it would have been obvious to modify the closure of Scott and include a flap over the aperture as recited in claim 18, since Scott teaches improving pizza delivery bags and Bonta teaches a flap-like closure will enable one to readily slip pizzas into the bag. It would have been further obvious to modify Scott and provide a disposable container, since Russell teaches it is more desirable to provide consumers with a delivery bag of reduced expense than re-use large, bulky, and expensive conventional pizza delivery bags and for a consumer to dispose of a delivery or carry-out type food bag would depend on (1) the condition of the bag when it received (e.g. tear free and clean) and (2) the usefulness of the bag for the consumer's in-home needs (e.g. re-use the bag to carry a prepared lunch to work or school), since it is notoriously well known that some consumers prefer to save food packaging material for re-use if (1) the bag

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arrives in good condition (e.g. not dirty or torn) and (2) the consumer has a use for the bag. It would have been further obvious for the consumer to fold or tear up the bag, depending on how compact the bag need to be to fit into a consumer's trash receptacle.

31. Regarding claim 20, although Scott teaches a metallized layer, and specifically teaches 0.0030 inches of metallized polyester, Scott is silent in teaching the bag is made solely of metallized polyethylene at 0.00125 inches thick. With respect to utilizing only one layer, Scott teaches the inner layer is a heat sealable layer to form the bag (Column 2, lines 45-62). Therefore, it would have been obvious to remove the interior layer of heat sealable material, depending on the method of sealing the bag (e.g. with adhesive). Furthermore, once it was known to select a metallized polymeric layer, to select any particular type of polymer or thickness would have been an obvious result effective variable of the desired outer layer properties since polymers differ by tear strength and flexibility and Scott teaches the bag must be flexible yet strong (Column 2, lines 17-19), in addition to maintaining low thermal transmission.

32. Claims 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott (US 6450685B1) in view of Bonta (US 6200029 B1) and Russell (CA 2041376 A) as applied to claims 18,20, and 24 above, further in view of Zion (US 4984734).

33. Scott teaches a flexible bag for delivering pizza, but is silent in teaching the pizza is contained in a box with vents.

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34. Bonta also teaches a flexible pizza bag. Bonta teaches such bags may be modified to enclose pizzas with or without boxes, but boxes offer the advantage of providing structural rigidity to the bag (Column 1, lines 35-50, Column 3, lines 20-23,30-35, Column 4, lines 8-11).

35. Zion is relied as evidence of the conventionality of providing vents in a pizza box to remove moisture and maintain crispness(Column 5, lines 40-45).

36. Therefore it would have been obvious to modify Scott, and include a pizza in a box, since Bonta teaches pizzas contained within boxes are advantageously used flexible/foldable pizza delivery bags to provide structural rigidity to the bags. It would have been further obvious to provide vents the boxes since Zion teaches venting moisture from the pizza helps to maintain crispness during delivery.

37. Claims 18 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (CA 2041376 A).

38. Russell teaches inserting pizzas , which have a top and base, into a deformable bag (i.e. foldable) with an aperture on side of the bag for inserting/removing pizza, and an integral radiant and convection barrier (i.e. an aluminum layer that is either coated or laminated to adjacent polymeric layers) that is provided to maintain heat and limit heat loss from the food. Russell teaches a bag for delivering pizza that is cheaper than the conventional pouch for thermally insulating pizza and as such can be left with the consumer (See Background of the Invention on Pages 1and 2, Pages 7 and 8, and Figures 1-4). Although Russell teaches leaving the pouch with the consumer, Russell is silent

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in teaching the bag is disposable per se and that the bag is disposed of by folding or manually tearing the bag to facilitate disposal as recited in claims 18 and 24. However, for a consumer to dispose of a delivery or carry-out type food bag, it would depend on (1) the condition of the bag when it received (e.g. tear free and clean) and (2) the usefulness of the bag for the consumer's in-home needs (e.g. re-use the bag to carry a prepared lunch to work or school), since it is notoriously well known that some consumers prefer to save food packaging material for re-use. Therefore, it would have been obvious for the consumer to dispose of the bag if (1) the bag arrived in poor condition (e.g. dirty or torn) and (2) the consumer has no use for the bag. It would have been further obvious for the consumer to fold or tear up the bag, depending on how compact the bag need to be to fit into a consumer's trash receptacle.

### ***Response to Arguments***

39. Applicant's arguments filed February 26, 2004 regarding Raszewski et al. (US 4987997), with respect to Raszewski et al. not teaching a beverage or food, as currently recited, have been fully considered and are persuasive. Therefore, the rejections of claims 9-13, 17 under 35 U.S.C. 102(b) as being anticipated by Raszewski et al. (US 4987997) and claims 14 and 15 under 35 U.S.C. 103(a) as being unpatentable over Raszewski et al. (US 4987997), further in view of Sheth et al. (US 5055338) has been withdrawn. However, upon further consideration of the new limitations added by the amendment, a new ground(s) of rejection is made as discussed above.

40. Applicant's arguments filed February 26, 2004 regarding the rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 3428103) in view of Peebles et al. (US 6471065 B1) and Cliff (US 6109440) with respect to Walsh not teaching a "disposable container" as currently recited has been fully considered and are persuasive. The rejection has been withdrawn. Accordingly, the rejection of claim 19 35 U.S.C. 103(a) as being unpatentable over Walsh ( US 3428103) in view of Peebles et al. (US 6471065 B1) and Cliff (US 6109440) further in view of Zion (US 4984734) has also been withdrawn. However, upon further consideration of the new limitations added by the amendment, a new ground(s) of rejection is made as discussed above.

41. Applicant's arguments filed February 26, 2004 regarding the rejection of claims 18 and 20 under 35 U.S.C. 103(a) as being unpatentable over Gatward (US 4515840) in view of. Peebles et al. (US 6471065 B1) and Cliff (US 6109440) with respect to Gatward not teaching a "disposable container" as currently recited has been fully considered and are persuasive. The rejection has been withdrawn.

### ***Conclusion***

42. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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43. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

45. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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46. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761



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